STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of RAYONA BELL, Minor.

DARLENE KING,

Petitioner-Appellant,

v

DEPARTMENT OF HUMAN SERVICES,

Respondent-Appellee.

UNPUBLISHED
March 15, 2007

No. 271845
Kent Circuit Court
Family Division
LC No. 06-021804-AM

In the Matter of DEJOHNAE BELL, Minor.

DARLENE KING,

Petitioner-Appellant,

v

DEPARTMENT OF HUMAN SERVICES,

Respondent-Appellee.

No. 271846
Kent Circuit Court
Family Division
LC No. 06-021802-AM

In the Matter of RAMON BELL, Minor.

DARLENE KING,

Petitioner-Appellant,

v

DEPARTMENT OF HUMAN SERVICES,

Respondent-Appellee.

No. 271847
Kent Circuit Court
Family Division
LC No. 06-021803-AM

Before: Fort Hood, P.J., and Smolenski and Murray, JJ.

PER CURIAM.

Petitioner Darlene King appeals as of right the trial court's order dismissing her petitions to adopt her grandchildren, Rayona Bell, Dejohnae Bell, and Ramon Bell ("the children"). We affirm.

On January 29, 2002, the children's mother, Shavon Bell, brought the children to petitioner's house and asked petitioner to keep them. Shavon signed a document purporting to grant petitioner power of attorney over, and guardianship of, the children. On February 12, 2002, Children's Protective Services removed the children from petitioner's home and Catholic Social Services ("CSS") placed the children in foster care. On March 18, 2004, Shavon's parental rights were terminated.[1] The children were committed to the Michigan Children's Institute ("MCI") for adoptive placement. Petitioner filed petitions to adopt the children. After conducting an adoptive family assessment, CSS recommended that petitioner's petitions for adoption be denied. The Michigan Indian Child Welfare Agency ("MICWA") recommended that petitioner be granted consent to adopt the children. William Johnson, the superintendent of the MCI, denied consent to the adoptions. Petitioner filed a motion under MCL 710.45(2), challenging his decision. The trial court held a hearing on petitioner's motion ("Section 45 hearing"). Based on the evidence presented at the hearing, the trial court upheld Superintendent Johnson's decision to withhold consent to the adoptions and dismissed the petitions for adoption.

Petitioner contends that the trial court erred in withholding evidence in this case. Petitioner afforded this issue less than cursory treatment in her appellate brief. She failed to set forth with specificity the evidence that was allegedly withheld. Further, she failed to support her argument with citation to the appropriate authority. Thus, this issue is abandoned on appeal.

> "An appellant may not merely announce its position or assert an error and leave it to this Court to discover and rationalize the basis for its claims, unravel or elaborate its argument, or search for authority for its position." *Wiley v Henry Ford Cottage Hosp*, 257 Mich App 488, 499; 668 NW2d 402 (2003). "Insufficiently briefed issues are deemed abandoned on appeal." *Etefia v Credit Technologies, Inc*, 245 Mich App 466, 471; 628 NW2d 577 (2001). [*Blackburne & Brown Mortgage Co v Ziomek*, 264 Mich App 615, 619; 692 NW2d 388 (2004).]

Petitioner next contends that hearing referee Sandra Recker and the Attorney General's office had conflicts of interest in this case and that the trial court erred in failing to disclose the conflicts of interest. Petitioner did not raise this issue in the trial court and, therefore, the issue is

[1] In *In the Matter of Bell*, unpublished opinion per curiam of the Court of Appeals, issued December 28, 2004 (Docket No. 255053), this Court affirmed the trial court's order terminating Shavon's parental rights pursuant to MCL 712A.19b(3)(c)(i) and (g).

not preserved for appeal. *Detroit Leasing Co v Detroit*, 269 Mich App 233, 237; 713 NW2d 269 (2005). Moreover, petitioner failed to present any evidence in support of her claims that a conflict of interest existed. This Court will not search the record for factual support for a party's claims. *Derderian v Genesys Health Care Sys*, 263 Mich App 364, 388; 689 NW2d 145 (2004). Further, she failed to establish that the alleged conflicts of interest influenced Superintendent Johnson's decision to deny consent to the adoptions or the trial court's decision to uphold his decision. "'An appellant may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims . . . .'" *In re Petition by Wayne Co Treasurer for Foreclosure of Certain Lands for Unpaid Prop Taxes*, 265 Mich App 285, 299-300; 698 NW2d 879 (2005) (citation omitted). Thus, petitioner is not entitled to relief on this issue.

Petitioner also contends that the trial court erred by failing to indicate its reasoning for disqualifying all of the judges of the Kent Family Court. Petitioner did not raise this issue in the trial court and, therefore, this issue is not preserved for appeal. *Detroit Leasing Co*, *supra* at 237. Nevertheless, petitioner's argument is without merit. The trial court explained, in its order disqualifying the judges, that the appointment of a visiting judge was necessary in this case "to avoid the appearance of a conflict." See MCR 2.003. Nothing in the lower court record indicates that petitioner challenged the trial court's decision to appoint a visiting judge. Therefore, petitioner is not entitled to relief on this issue.

Petitioner contends that the trial court erred in upholding Superintendent Johnson's decision to withhold consent to the adoptions. We disagree.

A decision of the representative agency to withhold consent to an adoption must be upheld unless there is clear and convincing evidence that the representative acted arbitrarily and capriciously. *In re Cotton*, 208 Mich App 180, 184; 526 NW2d 601 (1994). On appeal, we must determine whether the trial court applied the correct legal principals and whether it clearly erred in finding that the decision to withhold consent was neither arbitrary nor capricious. *Boyd v Civil Service Comm*, 220 Mich App 226, 234; 559 NW2d 342 (1996). "[A] finding is clearly erroneous when, on review of the whole record, this Court is left with the definite and firm conviction that a mistake has been made." *Id.* at 235.

A court shall not allow the filing of a petition to adopt a child unless the petition is accompanied by the consent of the authorized representative of the department or of a child placing agency to whom the child has been permanently committed by an order of the court, or the authorized representative of the department or of a child placing agency to whom the child has been released. MCL 710.43(1); MCL 710.45(1). If an adoption petitioner has been unable to obtain the required consent, the petitioner may file a motion with the court alleging that the decision to withhold consent was arbitrary and capricious. MCL 710.45(2). "Unless the petitioner establishes by clear and convincing evidence that the decision to withhold consent was arbitrary and capricious, the court shall deny the motion described in subsection (2) and dismiss the petition to adopt." MCL 710.45(7).

In *In re Cotton*, *supra* at 184-185, this Court explained:

> [T]he focus is not whether the representative made the "correct" decision or whether the probate judge would have decided the issue differently than the representative, but whether the representative acted arbitrarily and capriciously in

> making the decision. Accordingly, the hearing under § 45 is not . . . an opportunity for a petitioner to make a case relative to why the consent should have been granted, but rather is an opportunity to show that the representative acted arbitrarily and capriciously in withholding that consent. It is only after the petitioner has sustained the burden of showing by clear and convincing evidence that the representative acted arbitrarily and capriciously that the proceedings may then proceed to convincing the probate court that it should go ahead and enter a final order of adoption.
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> Because the initial focus is whether the representative acted arbitrarily and capriciously, the focus of such a hearing is not what reasons existed to authorize the adoption, but the reasons given by the representative for withholding the consent to the adoption. That is, if there exist good reasons why consent should be granted and good reasons why consent should be withheld, it cannot be said that the representative acted arbitrarily and capriciously in withholding that consent even though another individual, such as the probate judge, might have decided the matter in favor of the petitioner. Rather, it is the absence of any good reason to withhold consent, not the presence of good reasons to grant it, that indicates that the representative was acting in an arbitrary and capricious manner.

The generally accepted meaning of "arbitrary" is "determined by whim or caprice," or "arrived at through an exercise of will or caprice, without consideration or adjustment with reference to principles, circumstances, or significance, . . . decisive but unreasoned." *Goolsby v Detroit*, 419 Mich 651, 678; 358 NW2d 856 (1984). The generally accepted meaning of "capricious" is "apt to change suddenly; freakish; whimsical; humorsome." *Id.* (citations and internal quotes omitted).

Superintendent Johnson gave several reasons for denying consent to the adoptions. One of the reasons for withholding consent was the "chronic pattern of domestic chaos, of child neglect and abuse, of substance abuse, of home instability that has taken place for [petitioner's] entire life up until December of 2000." This reason was valid in light of the evidence. The evidence supported Superintendent Johnson's conclusion that petitioner had a history of "violent and unstable" relationships. Petitioner was never legally married. Three different men, none of whom were significantly involved in the children's lives, fathered her five children. Shavon's father was in prison for murder, for stabbing a man to death in petitioner's presence. In the 1990's, petitioner pleaded guilty to felonious assault and carrying a concealed weapon. Petitioner was the victim of domestic violence until 1992. The evidence also supported Superintendent Johnson's conclusion that petitioner had a history of substance abuse. Petitioner admitted that she was an alcoholic until 2000. At the time of the Section 45 hearing, petitioner was on probation for her third drunk driving conviction.

Superintendent Johnson also expressed concern over the fact that petitioner's parental rights were terminated as a result of parental neglect. He testified that the issues concerning the termination of petitioner's parental rights caused him to have concerns regarding petitioner's parenting ability and her credibility. His concerns were valid in light of the evidence. The undisputed evidence in this case established that the state of California terminated petitioner's parental rights, concerning Shavon, in 1987. The evidence supported Superintendent Johnson's

conclusion that Shavon was involuntarily removed from petitioner's care and that petitioner was not involved in Shavon's upbringing. The MICWA assessment indicated that

> Darlene became involved with Social Services in California after reports were made that she was providing improper supervision for her children. Darlene admitted that she would leave the children in the apartment while she ran errands. She reported she was having difficulty with the girls.

It further indicated:

> On December 6, 1983, Shavon was taken into custody by the San Diego police depertment [sic]. She had bruises and cuts on her forehead and cheeks, and reported that her mother had hit her with a flyswatter. Darlene admitted to hitting Shavon with the flyswatter. She requested that Shavon be removed from her care because she felt unable to appropriately discipline her. Darlene voluntarily participated in counseling to help improve her relationship with Shavon.

After petitioner's parental rights were terminated, Shavon lived at her grandfather's home, a children's home, and with her aunt. She did not reside with petitioner. At the Section 45 hearing, petitioner maintained that she did not learn that the State of California terminated her parental rights until 2005. However, respondent produced evidence establishing that, in 1994, petitioner testified at an administrative hearing that her parental rights were in fact terminated in the 1980's. Thus, Superintendent Johnson's concerns about petitioner's credibility were valid in light of the evidence presented. Superintendent Johnson also testified that the fact that petitioner was, at one time, placed on the Central Registry raised questions about her qualifications as a parent.[2]

Superintendent Johnson also expressed concern that petitioner was "a single parent with responsibility for the care of three birth children" and that "her ability to understand and meet the needs of three additional children with challenging needs while providing the secure and stable home environment they require is uncertain." Based on assessments performed by CSS, the agency responsible for placing the children for adoption, Superintendent Johnson concluded that

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[2] The Child Protection Law, MCL 722.621 *et seq.*, requires the reporting of child abuse and neglect by certain persons, including physicians, nurses and social workers. It establishes a central registry system and provides immunity for persons reporting such abuse. MCL 722.625; MCL 722.627. The contents of the registry are generally confidential, subject to a list of exceptions, which allow disclosure to certain individuals, including child care regulatory agencies, and child placing agencies. MCL 722.627(2). The record in this case indicates that when Shavon was 14 years old, petitioner approached her as she was walking down the street, punched her with her fist and pulled her into a car. The punch caused swelling above her eye and two cuts on her face. Based on this allegation of child abuse, petitioner was placed on the Central Registry. In 1994, an administrative law judge ordered that petitioner's record of child abuse be expunged from the Central Registry because petitioner's parental rights had been terminated, she did not have responsibility for Shavon's health and welfare, and "[b]eing a parent in and of itself is not sufficient to bring an individual under the jurisdiction of Child Protection Law."

all three children had "some special emotional characteristics and behavioral challenges" that needed to be addressed. The evidence established that petitioner was raising her three youngest children in her home. Petitioner testified that her children were successful in school and that they were involved in extracurricular activities. In her opinion, her grandchildren were healthy and normal and she believed that she could raise all six children successfully. However, the record supported Superintendent Johnson's conclusion that it would be a "hardship" for petitioner to raise six children with limited transportation. The evidence established that petitioner did not have a car or a driver's license at the time of the hearing. The record also established that petitioner had limited financial resources. Thus, the trial court did not err in concluding that it was neither arbitrary nor capricious for Superintendent Johnson to deny consent based on the fact that it would be difficult for petitioner to raise six children and that petitioner underestimated the difficulty.

Finally, Superintendent Johnson expressed concern over the fact that petitioner voluntarily stopped visiting the children before Shavon's parental rights were terminated and that "her relationship with the children [was] just beginning." The trial court concluded that, although there were factual disputes regarding petitioner's involvement with the children, the court could not "say that his finding that there was at least some disinterest, passivity on her part, is arbitrary and capricious." In light of the evidence presented in this case, we cannot say that the trial court's finding was clearly erroneous. The parties presented conflicting evidence regarding the extent of petitioner's involvement in the children's lives. However, on review of the whole record, we are not "left with the definite and firm conviction that a mistake has been made." *Boyd*, *supra* at 235. Moreover, in light of the other valid reasons articulated by Superintendent Johnson, the trial court did not err in finding that his decision to withhold consent to the adoptions was neither arbitrary nor capricious.[3]

Although petitioner attempted to provide this Court with several reasons why consent should have been granted, the focus is not whether Superintendent Johnson made the "correct" decision, but whether he acted arbitrarily and capriciously in making the decision. *In re Cotton*, *supra* at 184. "[I]f there exists good reasons why consent should be granted and good reasons why consent should be withheld, it cannot be said that the representative acted arbitrarily and capriciously in withholding consent even though another individual . . . might have decided the matter in favor of the petitioner." *Id.* Based on the evidence in this case, we agree with the trial court that there were "plenty of good reasons in this case for Mr. Johnson to have denied consent," including his concerns about whether petitioner possessed the ability to properly parent the children, whether she had the ability to provide for the children's behavioral and

[3] We recognize that petitioner had taken steps to improve her life and the lives of her children. She had obtained treatment for her alcohol problem, and her three children living in her home were doing well in the environment she provided for them. The lack of consent for adoption by respondent did not diminish the recent strides petitioner had taken to effectively parent her three children. However, the focus is not upon the good reasons to grant consent, and the arbitrary and capricious standard applied to the adoption consent decision is extremely high to overcome. The decision was not a commentary on the life changes that petitioner had undertaken, but rather reflected the additional efforts that would be required to manage the care and support of three more children with special needs.

developmental needs, and whether her home environment would meet the children's long-term requirements.

Further, the record reflects that there was an investigation of the situation and that Superintendent Johnson's decision to withhold consent was based upon the results of that investigation and the recommendation of the professionals and staff members involved. Thus, we cannot say that Superintendent Johnson's decision was made in an arbitrary or capricious manner. Not only did Superintendent Johnson review the CSS and MICWA assessments, he also reviewed the rebuttal letters that petitioner sent to CSS, challenging its recommendation that her adoption petitions be denied. Further, petitioner was afforded an opportunity to respond to the CSS assessments when she met with Bruce Hoffman, an MCI employee. After meeting with petitioner and discussing the case with representatives from CSS and the MICWA, Hoffman recommended that Superintendent Johnson withhold consent for the adoptions. He concluded that it would be very difficult for petitioner to provide for three additional children and that, based upon her history, he was uncertain as to whether she would be able to maintain a suitable home for the children. It is apparent from the record that the trial court found Superintendent Johnson and Hoffman to be credible witnesses. We must give deference to the trial court's special opportunity to judge the credibility of the witnesses who appeared before it. MCR 2.613(C); see also *In re Miller,* 433 Mich 331, 337; 445 NW2d 161 (1989).

The record reflects that the trial court properly recognized that the scope of the hearing did not involve the "correctness" of the information in the reports on which Superintendent Johnson relied. Rather, the court's duty was to determine whether Superintendent Johnson's decision to withhold consent was made in an arbitrary and capricious fashion. *In re Cotton, supra*. Superintendent Johnson presented good reasons supporting his decision to withhold consent. His reasons were valid in light of the evidence. His decision was neither frivolous nor whimsical. Therefore, the trial court did not clearly err in finding that his decision to withhold consent was neither arbitrary nor capricious. Because petitioner failed to establish by clear and convincing evidence that the decision to withhold consent was arbitrary and capricious, the trial court was required to dismiss petitioner's petitions to adopt the children. MCL 710.45(7).

Petitioner argues that the trial court erred in following *In re Cotton, supra,* because it was decided before the federal Adoption and Safe Families Act of 1997 and because federal law trumps state law. Petitioner did not raise this issue below. Therefore, she failed to preserve this issue for appeal. *Detroit Leasing Co, supra* at 237. Nevertheless, "[a] published opinion of the Court of Appeals has precedential effect under the rule of stare decisis." MCR 7.215(C)(2). *In re Cotton, supra,* has not been modified or reversed by our Supreme Court. Therefore, contrary to petitioner's argument, the decision was binding on the trial court and is binding on this Court. MCR 7.215(J)(1); *Catalina Marketing Sales Corp v Dep't of Treasury,* 470 Mich 13, 23; 678 NW2d 619 (2004).

Petitioner next contends that, in upholding Superintendent Johnson's decision, the trial court failed to act in the best interests of the children. The Michigan Adoption Code, MCL 710.21 *et seq.*, aims to promote the best interest of the adoptee. MCL 710.21a(b); *In re RFF,* 242 Mich App 188, 207-208; 617 NW2d 745 (2000). However, because the trial court did not find any grounds for granting petitioner's Section 45 motion, the trial court was not required to go beyond the evidence presented at the Section 45 hearing to determine the children's best

interests. The trial court was not permitted to decide the adoption issue de novo. *In re Cotton, supra* at 184-185.

Petitioner asserts that the children were subject to physical and sexual abuse in their foster home and that the foster parents' license was revoked after their adopted son was convicted of criminal sexual conduct. The record in this case indicates that before the Section 45 hearing, the trial court ruled that evidence concerning the foster family and the status of the foster parents' license was inadmissible at the Section 45 hearing. To the extent that petitioner challenges the trial court's decision to exclude this evidence, petitioner failed to include the issue in her statement of questions presented. The failure to include an issue in the statement of questions presented on appeal constitutes an improper presentation of the issue. MCR 7.212(C)(5); *Health Care Ass'n Workers Compensation Fund v Director of the Bureau of Worker's Compensation, Dep't of Consumer & Industry Services,* 265 Mich App 236, 243; 694 NW2d 761 (2005). Nonetheless, the evidence was not relevant to the trial court's determination whether Superintendent Johnson acted arbitrarily or capriciously in denying consent to the adoptions. "Relevant evidence" means "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." MRE 401. The evidence was not relevant to a determination whether petitioner's home was suitable for placement of the children. Whether the children were exposed to danger in the foster home, as petitioner alleged, did not tend to make it any more probable or less probable that petitioner was qualified to adopt the children. Thus, the trial court properly excluded the evidence. MRE 402. Petitioner asserts that the dangerousness of the children's placement in the foster home was "open and obvious." However, petitioner's reliance on the open and obvious doctrine is misplaced. The open and obvious doctrine is applied in premises liability cases to determine whether a possessor of land has a duty to protect others from a danger on the land. See e.g., *Lugo v Ameritech Corp, Inc*, 464 Mich 512, 516-517; 629 NW2d 384 (2001). The open and obvious doctrine has not been applied in adoption cases and provides no basis for relief in this case.

Finally, petitioner argues that, by allowing the foster family to change the children's names, the MCI violated her due process rights. Petitioner did not raise this issue below. Therefore, this issue is not preserved for appeal. *Detroit Leasing Co, supra* at 237. Further, the record indicates that the foster family was granted consent to adopt the children. Petitioner failed to cite any authority in support of her argument that allowing the adoptive parents to change the children's names constitutes a violation of her due process rights. To the contrary, MCL 710.60 suggests that adopting parents may lawfully select the name for a minor they are adopting. A party may not state their position and then leave it to this Court to search for authority in support of that position. *Badiee v Brighton Area Schools*, 265 Mich App 343, 357; 695 NW2d 521 (2005). Petitioner is not entitled to relief on this issue.

Affirmed.

/s/ Karen M. Fort Hood
/s/ Michael R. Smolenski
/s/ Christopher M. Murray